

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

REGINA LEE and JERRY CHAO,	x
	: Civil Action No.:
Plaintiffs,	:
	:
- against -	: <u>NOTICE FOR REMOVAL</u>
	:
NATIONAL RAILROAD PASSENGER:	:
CORPORATION (AMTRAK) and BRANDON:	:
BOSTIAN,	:
	:
Defendants.	x

Defendant National Railroad Passenger Corporation d/b/a Amtrak ("Amtrak"), by and through its attorneys, Landman Corsi Ballaine and Ford P.C., respectfully states, upon information and belief:

1. Amtrak has been named as a defendant in an action now pending in the Supreme Court of the State of New York, County of New York, Index No. 156549/2015, entitled Regina Lee and Jerry Chao v. National Railroad Passenger Corporation, et al. (See Summons and Verified Complaint at Exhibit A).

2. The above-referenced action was commenced by the filing of the Summons and Verified Complaint on or about June 30, 2015. (See Exhibit A).

3. Amtrak first received a copy of the Verified Complaint when it was obtained from the NYSCEF docket by Amtrak's counsel on July 1, 2015. (See Exhibit A).

4. The United States District Court for the Southern District of New York has original jurisdiction over this action

because Amtrak was created by an Act of Congress, 49 U.S.C. § 24101 et seq., and more than half of its corporate stock is owned by the federal government. See 28 U.S.C. § 1349. As such, this case is removable to this Court pursuant to 28 U.S.C. § 1441(a).

5. The New York County NYSCEF docket sheet does not reflect service of the Verified Complaint on defendant Brandon Bostian. (See Exhibit B).

6. Defendant Bostian's consent to removal is not required in this case because he has not yet been served with the Complaint.

7. Pursuant to 28 U.S.C. § 1446(a), copies of all pleadings served upon Amtrak are attached hereto as Exhibit A.

**WHEREFORE**, Amtrak requests that the action described herein now pending in the Supreme Court of the State of New York, County of New York, be removed to this Court.

LANDMAN CORSI BALLAINE & FORD P.C.  
Attorneys for Defendant  
National Railroad Passenger  
Corporation d/b/a Amtrak

By: \_\_\_\_\_

John A. Bonventre

Dated: July 7, 2015

# EXHIBIT

## A

FILED: NEW YORK COUNTY CLERK 06/30/2015 10:40 AM

INDEX NO. 156549/2015

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 06/30/2015

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
REGINA LEE and JERRY CHAO,

Plaintiffs,

- against -

NATIONAL RAILROAD PASSENGER CORPORATION  
(AMTRAK) and BRANDON BOSTIAN,

Defendants.

Index No.:

Date Purchased:

Plaintiff(s) designate  
**NEW YORK COUNTY**  
County as the place of trial.

The basis of venue is:

Plaintiffs' Residence

**SUMMONS**

Plaintiff(s) reside(s) at:  
**1330 1<sup>st</sup> Avenue**  
**New York, NY 10021**

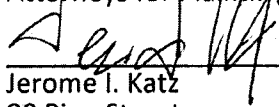
To the above named Defendants:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within **20** days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in this complaint.

Dated, New York, New York  
June 25, 2015

Yours etc.,

GAIR, GAIR, CONASON, STEIGMAN  
MACKAUF, BLOOM & RUBINOWITZ  
Attorneys for Plaintiff(s)

  
Jerome I. Katz  
80 Pine Street  
New York, NY 10005  
(212) 943-1090

Defendant(s) address(es):

**National Railroad Passenger Corporation (AMTRAK)**  
**60 Massachusetts Avenue NE**  
**Washington, DC 20002-4285**

**Brandon Bostian**  
**109-20 71<sup>st</sup> Road, Apt. 5J**  
**Forest Hills, NY 11375**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

REGINA LEE and JERRY CHAO,

Index No.

Plaintiffs,

VERIFIED COMPLAINT

- against -

NATIONAL RAILROAD PASSENGER CORPORATION  
(AMTRAK) and BRANDON BOSTIAN,

Defendants.

-----X

Plaintiffs, complaining of the defendants by their attorneys, GAIR, GAIR,  
CONASON, STEIGMAN, MACKAUF, BLOOM & RUBINOWITZ, respectfully allege and show  
to this Court as follows:

AS AND FOR A FIRST CAUSE OF ACTION ON  
BEHALF OF THE PLAINTIFF REGINA LEE

1. Upon information and belief, the defendant NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) is a foreign corporation organized and existing under and by virtue of the laws of the District of Columbia.
2. Upon information and belief, the defendant NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) is authorized to do business in the State of New York.
3. Upon information and belief, the defendant NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) operates a passenger rail transportation line known as "Amtrak".
4. Upon information and belief, at all times hereinafter mentioned, the defendant NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) was and still is the owner of a certain railway line known as the Northeast Corridor and the railroad tracks.

5. Upon information and belief, at all times hereinafter mentioned, the defendant NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) was and still is the owner of a certain railway line known as the Northeast Corridor and, particular, the Frankfort Junction in the Port Richmond neighborhood of Philadelphia, Pennsylvania.

6. Upon information and belief, at all times hereinafter mentioned the defendant NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) was and still is the owner of a certain train number 188 known as the Northeast Regional.

7. Upon information and belief, NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) was and still is the registered owner of the aforesaid Amtrak passenger train number 188 known as the Northeast Regional .

8. Upon information and belief, the defendant NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) was and still is the title holder of the aforesaid Amtrak passenger train number 188 known as the Northeast Regional.

9. Upon information and belief, the defendant BRANDON BOSTIAN was an employee of the defendant NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK).

10. Upon information and belief, on May 12, 2015, the defendant BRANDON BOSTIAN operated, managed, maintained and controlled the aforesaid train with the permission and consent of the defendant NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK).

11. Upon information and belief, on May 12, 2015 the defendant BRANDON BOSTIAN operated, maintained and controlled the aforesaid train while in the course and scope of his employment with the defendant NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK).

12. Upon information and belief, on May 12, 2015 the defendant BRANDON BOSTIAN operated, maintained and controlled the aforesaid train while in the course and scope of his employment with the defendant NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) and in the furtherance of its business.

13. That on May 12, 2015 the plaintiff REGINA LEE was a lawful passenger in the aforesaid train number 188 known as the Northeast Regional.

14. That on May 12, 2015 at approximately 9:23 p.m. the defendant BRANDON BOSTIAN operated the aforesaid train north of the Philadelphia 30<sup>th</sup> Street Station on the Northeast Corridor at the railroad's Frankfort Junction in the Port Richmond neighborhood of Philadelphia, Pennsylvania.

15. That on May 12, 2015 at approximately 9:23 p.m. the aforesaid train derailed and crashed on the Northeast Corridor in the Port Richmond neighborhood of Philadelphia, Pennsylvania.

16. The aforesaid occurrence was caused by the negligence of the defendants, their agents, servants and employees, in the ownership, operation, management, maintenance and control of the aforesaid train and the railroad tracks; in operating the train at an improper, inappropriate, dangerous and hazardous rate of speed; in failing to yield and slow down when approaching a sharp curve in the railroad tracks; in failing to advise their employees, including the defendant BRANDON BOSTIAN, of approaching an unsafe, hazardous and dangerous sharp curve in the railroad tracks; in failing to equip the engine of the train with proper and adequate controls; in causing, permitting and allowing the train to go off the railroad tracks and crash; in maintaining, managing, controlling, operating, constructing and designing an unsafe and dangerous railroad line, including the sharp curve north of the Philadelphia 30<sup>th</sup> Street Station; in failing to correct the unsafe condition of the tracks at the location of the accident

despite notice that they were in unsafe and hazardous; in failing to have the positive train control (PTC) operational; in failing to properly and regularly train, instruct, monitor and supervise their employees, including the defendant BRANDON BOSTIAN; in negligently hiring and retaining the defendant BRANDON BOSTIAN and in otherwise being careless and negligent.

17. That by reason of the foregoing, the plaintiff REGINA LEE sustained injuries to her head, limbs and body, a severe shock to her nervous system, and has been caused to suffer severe physical pain and mental anguish as a result thereof; and, upon information and belief, some of these injuries are of a permanent and lasting nature; that the plaintiff has been caused to be confined to a hospital and bed and home as a result thereof, and has been forced to abstain from her usual activities, all to her damage.

18. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

19. It is hereby alleged pursuant to CPLR §1603 that the foregoing cause of action is exempt from the operation of CPLR §1601 by reason of one or more of the exemptions provided in CPLR §1602, including, but not limited to §1602(7) on the ground that defendants acted with reckless disregard for the safety of others.

AS AND FOR A SECOND CAUSE OF ACTION ON  
BEHALF OF THE PLAINTIFF JERRY CHAO

20. The plaintiff JERRY CHAO, repeats, reiterates and realleges each and every allegation of this Complaint marked and designated "1" through "18", inclusive, with the same force and effect as if hereinafter set forth more fully at length.

21. Prior to the commencement of this action and on the date of the occurrence, the plaintiff JERRY CHAO was and still is the husband of the plaintiff REGINA LEE and they duly cohabited as husband and wife.



22. By reason of the foregoing, the plaintiff JERRY CHAO has sustained loss of consortium, having been deprived of the rights and interests which have accrued by reason of his said marriage and the continuation of said marital relationship, including those of conjugal fellowship, support, aid, company, society, affection, comfort, services and cooperation, and has been caused to expend or become obligated to expend sums of money for medical attention and medicines.


23. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

24. It is hereby alleged pursuant to CPLR §1603 that the foregoing cause of action is exempt from the operation of CPLR §1601 by reason of one or more of the exemptions provided in CPLR §1602, including, but not limited to §1602(7) on the ground that defendants acted with reckless disregard for the safety of others.

WHEREFORE, the plaintiff REGINA LEE demands judgment against the defendants in the First Cause of Action and the plaintiff JERRY CHAO demands judgment against the defendants in the Second Cause of Action, together with the interest, costs and disbursements of this action.

Yours etc.,

GAIR, GAIR, CONASON, STEIGMAN  
MACKAUF, BLOOM & RUBINOWITZ  
Attorneys for Plaintiff(s)

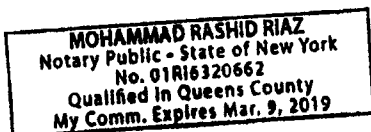
  
\_\_\_\_\_  
Jerome I. Katz  
80 Pine Street  
New York, NY 10005  
(212) 943-1090

I am one of the plaintiffs in the within action. I have read the foregoing COMPLAINT and know the contents thereof; that the same is true to my own knowledge, except those matters therein alleged to be on information and belief, and as to those matters, I believe it to be true.

JERRY CHAO

Sworn to before me this  
25 day of June, 2015

Notary Public



# **EXHIBIT**

# **B**

**156549/2015 - New York County Supreme Court**

Short Caption: **REGINA LEE et al - v. - NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) et al**  
 Case Type: **Tort** eFiling Status: **Partial Participation Recorded**  
 Case Status: **Pre-RJI** Assigned Judge:  
**Narrow By Options**

Document Type:  Filed By:   
 Motion Number:  Filed Date:  thru

Sort By:

To view details, click on the **Doc #** link

Doc #	Document Type	Status	Received Date	Filing User	View
1	<b>SUMMONS + COMPLAINT</b> Summons and Verified Complaint	Processed	06/30/2015	Katz, J.	<a href="#">Confirmation Notice</a>



**Hon. Milton A. Tingling**  
 New York County Clerk and Clerk  
 of the Supreme Court

**New York County Clerk's Office**  
 60 Centre Street  
 New York, NY 10007  
 646-386-5956

**Manuel J. Tavarez**  
 New York County Clerk's Office  
[mTavarez@nycourts.gov](mailto:mTavarez@nycourts.gov)

**E. Hodge and M. Baccellieri**  
 NY County Clerk E-Filing Dept.  
 (646-386-3737)  
[cc-nyef@nycourts.gov](mailto:cc-nyef@nycourts.gov)

**E-Filing Resources**  
[New York County E-Filing](#)  
[New York County Protocol](#)



Welcome to the  
 New York County  
 Clerk's E-Filing  
 Program as part of  
 the NYSCEF  
 System. Please  
 refer to the E-file protocol  
 explaining procedures in New  
 York County regarding e-filed  
 cases. Thank you.  
[New York County Clerk Website](#)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

REGINA LEE and JERRY CHAO,

x

Plaintiffs,

:

CIVIL ACTION NO.:

:

- against -

:

DECLARATION OF SERVICE

:

NATIONAL RAILROAD PASSENGER:  
CORPORATION (AMTRAK) and BRANDON:  
BOSTIAN,

:

:

Defendants.

x

I, John A. Bonventre, of full age, certify as follows:

1. I am a member with the firm of Landman Corsi Ballaine & Ford, P.C., attorneys for defendant National Railroad Passenger Corporation d/b/a Amtrak in the above matter.

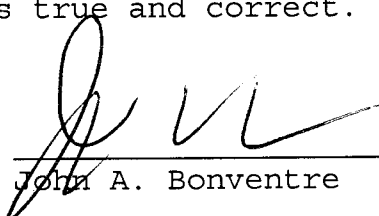
2. On July 7, 2015, I served a copy of Amtrak's Notice for Removal and attachments in support thereof via first class mail, postage prepaid on the following:

Jerome I. Katz, Esq.  
Gair, Gair, Conason, Steigman  
Mackauf, Bloom & Rubinowitz  
80 Pine Street  
New York, New York 10005

Brandon Bostian  
10920 71<sup>st</sup> Road, Apt. 5J  
Forest Hills, NY 11375-4809

I hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

By:

  
John A. Bonventre

Dated: July 7, 2015